

These are the tentative rulings for civil law and motion matters set for Friday, June 7, 2019, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Thursday, June 6, 2019. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER GLENN M. HOLLEY AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 31, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0072840 U.S. Bank Trust, N.A. vs. Sterner, Carla

The motion for summary judgment is continued to June 14, 2019, at 8:30 a.m. in Department 3 to be heard by the Honorable Michael W. Jones. The court apologizes for any inconvenience to the parties.

2. M-CV-0073259 Godfrey Family Trust, et al vs. Flores, Carlos R., et al

Defendant Terri L. Flores' demurrer to complaint is overruled.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. Based on the court's review of the complaint as a whole, the complaint alleges sufficient facts to state a valid cause of action for unlawful detainer.

3. S-CV-0022813 Koch & Bottini vs. Bell-Lashley, Amber Rochelle

Judgment debtor Amber Rochelle Bell Lashley's motion to vacate renewal of judgment is **continued to July 12, 2019, at 8:30 a.m. in Department 31**. There is no proof of service in the court's file establishing proper and timely service of the motion on judgment creditor. Code Civ. Proc. § 683.170(b). In advance of the continued hearing date, judgment debtor shall timely serve

all moving papers and notice of the continued hearing date on judgment creditor's attorney of record.

4. S-CV-0030314 Belisle, David, et al vs. Centex Homes

The motion to dismiss was continued by agreement of the parties to June 21, 2019, at 8:30 a.m. in Department 3 to be heard by the Honorable Michael W. Jones.

5. S-CV-0038653 Hill, Michelle Lynn vs. Lecona, Raul, et al

The motion to quash or modify subpoena is continued to June 21, 2019, at 8:30 a.m. in Department 31 to be heard with other pending motions in this case.

6. S-CV-0038785 Armstrong, A. Ann, et al vs. Pulte Home Corporation

Barbosa Cabinets, Inc.'s motion for determination of good faith settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

7. S-CV-0038831 Shade & Putnam Tech. Solutions, Inc. vs. Granite Financial

The motion to compel further responses to discovery is continued to June 14, 2019, at 8:30 a.m. in Department 31 to be heard with plaintiff's motion for leave to amend.

8. S-CV-0038955 Shade, Christine vs. Centex Homes, et al

Adland Venture's motion for determination of good faith settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

9. S-CV-0039588 Black, Edith vs. FCA US LLC

The motion to enforce settlement agreement is continued to June 20, 2019, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

10. S-CV-0040492 Automotive Finance Corporation vs. Luxano Enterprises, Inc.

The motion to enter default judgment is dropped as no moving papers were filed with the court.

11. S-CV-0041183 Miles, Tassanna vs. Wells Fargo Bank, N.A., et al

The motion to compel discovery responses and deem requests for admission admitted is denied without prejudice as defendant fails to demonstrate compliance with Local Rule 20.2.1.

12. S-CV-0041473 Norton, Glenn W. Jr. vs. Norton, James Robert Sr., et al

The demurrer to second amended complaint is dropped in light of the dismissal of the action entered April 30, 2019.

13. S-CV-0041477 Mehrshahi, Shahkeikhsrow vs. Roseville Pt. Health & Wellness

The motion to compel depositions was dropped by the moving party.

14. S-CV-0041667 Smart, Nicole vs. The Cheesecake Factory Restaurants, Inc.

Defendants' request for judicial notice is granted.

Defendants The Cheesecake Factory Restaurants, Inc. and The Cheesecake Factory Incorporated move for judgment on the pleadings as to plaintiff's complaint in this action. A motion for judgment on the pleadings has the same function as a general demurrer, but is made after the time for demurrer has expired. Code Civ. Proc. § 438. The same rules governing demurrers apply. *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.

Defendants' motion is granted with leave to amend. The complaint alleges an enforcement action under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.* ("PAGA") to recover civil penalties for applicable violations occurring "at any time between one year prior to the filing of this complaint until judgment". (Complaint at 1:4-12.) Plaintiff alleges that she was employed with defendants from approximately 2008 to June 21, 2017. (Id. at 2:8-10.) Because the complaint was filed August 20, 2018, the allegations do not establish plaintiff as an "aggrieved employee" under Labor Code section 2699(c). *See also Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 387. Plaintiff concedes that the current allegations of the complaint create an issue with respect to her standing, and requests leave to amend. Defendants oppose the request for leave to amend, arguing that further amendments would be futile because plaintiff's claims in this action are barred by the applicable statute of limitations, as well as prior class action settlements.

The court disagrees with defendants' contention that the applicable statute of limitations bars plaintiff's action. The statute of limitations for a PAGA claim is one year. See Code Civ. Proc. § 340. However, the statute of limitations is tolled while the Labor and Workforce Development Agency ("LWDA") considers whether to prosecute, up to a maximum of 65 days. Lab. Code § 2699.3(a)(2), (d). The complaint alleges that plaintiff's last day of employment with defendants was June 21, 2017, that plaintiff provided written notice of her claims to the LWDA and defendants on June 15, 2018, and that 65 days passed with no response from the LWDA as to whether it intended to investigate plaintiff's claims. (Complaint at 2:8-10, 12:16-28.) Considering the tolling period under Labor Code section 2699.3(d), plaintiff's complaint was timely filed.

Defendants argue that even if the action was timely filed as to some of plaintiff's claims, it was not timely filed as to plaintiff's sick leave and anti-wage theft claims, which are not listed in Labor Code section 2699.5 or Labor Code sections 6300 *et seq.* Labor Code section 2699.3(c)(2)(A) provides that an employee may commence a civil action related to any such claims if after notice is given the employer does not cure the violation within 33 calendar days. The court declines to consider this issue because it is irrelevant for the purpose of ruling on defendants' motion. Defendant's notice of motion indicates that the motion is directed to the entirety of the complaint, not to any discrete claims therein, and therefore the motion may not be granted only as to a portion of the complaint. See Code Civ. Proc. § 438(c)(2)(A); *see also Warren v. Atchison, Topeka & Santa Fe Railway Co.* (1971) 19 Cal.App.3d 24, 36.

Finally, defendants argue that prior class action settlements bar all or some of the claims alleged by plaintiff. Defendants provide insufficient information for the court to make such a determination. With respect to the case *Abdelaziz v. The Cheesecake Factory Restaurants, Inc.*, defendants request judicial notice of a tentative ruling issued by the San Diego County Superior Court. (RJN, Exh. C.) The tentative ruling states that defendants have agreed to pay a gross settlement amount in exchange for settlement and release "of any meal claims and derivative claims". Based on this limited information, which does not include the operative complaint, the settlement agreement, or other relevant information, the court is unable to assess whether the claims alleged in the current complaint involve the same primary right(s) at issue and finally settled in the *Abdelaziz* action.

With respect to the case *Masters v. The Cheesecake Factory Restaurants, Inc.*, defendants request judicial notice of a JAMS ruling granting preliminary approval of class action settlement. (RJN, Exh. D.) The ruling attaches the proposed settlement agreement, which defines "released claims" as:

all known and unknown claims ... that were or could have been asserted by the Class based on the existing allegations contained in the Third Amended Complaint filed in the Arbitration including, but not limited to any claims for failure to pay overtime, failure to provide rest breaks, wage statement claims under Labor Code Section 226, waiting time penalties for failure to pay all wages due upon employment/termination under Labor Code Section 201, 202 and 203 and claims under [the UCL] and under the Private Attorneys General Act ... based on the failure to pay overtime, the failure to provide rest breaks, any wage statement claims, and waiting time penalties claims for failure to pay all wages due upon employment termination.

Although the settlement agreement has been provided, the information before the court remains incomplete. The court has not been provided with the operative complaint in the *Masters* case, or other information regarding events after the motion for preliminary approval was granted, such as proper notice being given to the class including plaintiff, any action or inaction on plaintiff's part in response to such notice, or final approval of the settlement agreement. Thus the court is unable to assess whether the claims alleged in the current complaint involve the same primary right(s) at issue and finally settled in the *Masters* action.

Based on the foregoing, defendants' motion for judgment on the pleadings is granted with leave to amend. Any amended complaint shall be filed and served on or before June 21, 2019.

15. S-CV-0041913 Robertson, Charles vs. Hayes Auto Sales

Defendant Hayes Auto Sales' motion to compel is granted.

Responses to interrogatories must be "as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it shall be answered to the extent possible." Code Civ. Proc. § 2030.220. If the question is specific and explicit, a response that provides only a portion of the information sought is improper. *See Deyo v. Kilbourne* (1978) 84 Cal.3d 771, 783. Plaintiff's responses to form interrogatory Nos. 8.6, 8.7 and 17.1 are non-responsive. Plaintiff fails to state the dates he did not work and for which he lost income, or the manner in which he calculated the total income he alleges he lost. Further, plaintiff's responses to each request for admission were not unqualified admissions, as he denied request Nos. 2-11. In response to special interrogatories, plaintiff is obligated to respond with complete information, including dates, persons involved, amounts at issue, identification of specific documents and/or other relevant details.

Plaintiff shall serve further responses to defendant's form interrogatories, Nos. 8.6, 8.7 and 17.1, and special interrogatories, Nos. 1-9, on or before June 28, 2019.

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